CHAPTER 7 REGULATORY FRAMEWORK REVIEW

The framework of regulations and related policies for multi-family water and wastewater billing systems is both complex and quickly evolving. During the time that this research study has been in preparation, significant changes in the policy framework have been adopted by the federal government, several states, and major local jurisdictions, and important issues remain in flux. In this chapter, the most significant federal, state, and local policies toward multi-family billing methods are identified and discussed. The purpose for this review is not to assemble a manual of regulations for those making site-specific decisions about separate billing systems, but rather to provide policymakers and key stakeholders with an illustrative set of the most relevant policies and concepts found today, to stimulate discussion about the most appropriate future direction for policies toward these billing systems.

Following a brief overview of federal regulations and related polices, state policies toward water and wastewater billing methods are identified. State policies are outlined in two surveys undertaken prior to this report, and the findings of three original surveys of state agencies undertaken as part of this report are presented. A new survey of water utility managers regarding local billing method policies is also presented. Finally, key state and local policies drawn from all these sources and other available literature are discussed, organized around key themes or regulatory objectives.

FEDERAL POLICIES RELATING TO MULTI-FAMILY BILLING

Safe Drinking Water Regulation

During the past decade, the most visible federal policy regarding the installation of water and/or wastewater billing systems in multi-family dwellings has been the implementation of the Safe Drinking Water Act (SDWA). Section 1401 if this act defines a "public water system" as a system that provides water through pipes or other constructed conveyances to the public for human consumption, and has at least 15 service connections or regularly serves at least 25 people. Under the act, certain public water systems are subject to the national primary drinking water regulations. These regulations call for, among other things, regular monitoring of water systems for a wide variety of contaminants, remedial actions, and reporting requirements. Section 1411 of the act lays out four criteria which, if all were met, would exempt certain public

water systems from compliance with the national primary drinking water regulations. One of these criteria is that the system "does not sell water to any person."

In response to inquiries and Congressional questions about the application of SDWA requirements to multi-family billing systems, EPA's Office of Ground Water and Drinking Water produced a policy memorandum in 1998 which spelled out the view of the issue from EPA headquarters. At that time, EPA took the position that property owners were selling water within the meaning of the act if charges for water were separately billed to residents. Thus either submetered or RUBS billing systems *would not qualify for a broad exemption* from compliance with the national primary drinking water regulations.

In the same 1998 policy guidance EPA noted that states have flexibility to designate these billing systems as "consecutive" water systems, which is a system that purchases water from another public water system and "may be afforded certain monitoring modifications" to "avoid unnecessary compliance activities." Noting the potential conservation benefits from submetering, EPA deemed the consecutive designation to be appropriate, subject to the states' assessment of the need for any of these systems to conduct additional monitoring to protect public health.

EPA's regional office in Atlanta, with geographic responsibility extending across most of the southeastern states, placed a decidedly less accommodating spin on the agency's nationwide guidance. In a memorandum in June 2000 to state drinking water officials, the Acting Director of the Water Management Division in Atlanta asserted that "EPA Region 4 takes the opinion that States should work to prevent the formation of these types of submetered systems, and should aggressively work to consolidate these submetered systems together with their 'parent systems.'" While concurring that submetered systems could be designated as consecutive water systems, and that consecutive systems "may be afforded certain monitoring modifications," this office took the position that states (to maintain primacy over the administration of the Safe Drinking Water Act) must require certain minimum on-site monitoring requirements of all submetered systems. These were to include routine bacteriological monitoring, lead and copper monitoring, and disinfection by-product monitoring. Additionally, monitoring of residual chlorine levels on a daily basis was recommended. Such monitoring requirements would effectively ban submetering and RUBS by making them completely impractical.

In 2002 Alabama's Department of Environmental Management fashioned a regulation acceptable to EPA regional officials that exempted submetered systems with demonstrably low

risk - predominantly indoor piping, no on-site storage, no on-site pumping, no known cross-connection issues - from monitoring requirements, provided that they registered with the state and re-certified every three years.

In August 2003, seeking to encourage water conservation benefits attributed to submetering, the Assistant Administrator for Water proposed a significant re-interpretation of the Safe Drinking Water Act regarding submetered systems. In a policy shift that was finalized in December 2003, EPA noted that the "sale" of water had not actually been defined in the Safe Drinking Water Act, and that henceforth a multi-family property with submetered billing to residents would not be subject to the national primary drinking water regulations. Calling submetering an "effective but little-used tool" to promote water conservation, EPA clearly signaled a pullback from any insistence at the federal level that submetered systems would be required to perform the monitoring and record-keeping tasks of public water utilities, even if they nominally remained "public water systems." The new guidance noted that "the addition of a submeter should not in any way change the quality of water provided to customers on the property." States, however, would be free to exercise their own discretion regarding conditions that might be placed upon submetered systems, and how best to track them. The new policy guidance referred favorably to both Alabama's conditional criteria for monitoring relief and to Texas' requirement for replacement of inefficient plumbing fixtures as a condition for approving any separate billing system. But citing a lack of evidence to support water saving benefits, the *new policy pointedly excluded RUBS and hot water hybrid allocation systems* from its scope, and urged states to consider whether flexibility was warranted for such systems as well.

Weights and Measures Standards

The National Institute of Standards and Technology (NIST) is a non-regulatory federal agency within the U.S. Commerce Department's Technology Administration. NIST's mission is to "develop and promote measurement, standards, and technology to enhance productivity, facilitate trade, and improve the quality of life" (NIST 2004a). The NIST Weights and Measures Division promotes uniformity of weights and measures standards nationwide. To that end, NIST initiated and organizes a professional organization of local, state, and federal regulators, scientists, and other stakeholders known as the National Conference on Weights and Measures (NCWM) to partner with the Weights and Measures Division to create model laws, regulations,

and methods of practice. NIST publishes these documents, and if a locality or state adopts the rules, they become mandatory.

The primary product of NIST's Weights and Measures Division is NIST Handbook 44, "Specifications for Weights and Measures Devices" (NIST 2004b). The handbook is updated annually and covers scales, liquid-measuring devices, vehicle tanks used as measures, and fabric and other measurement devices. Water meters are covered under NIST Handbook 44 Section 3.36. The section outlines the standard design of water meters, testing procedures, and acceptable tolerances for meters. The handbook does not cover the frequency with which a meter must be tested, nor does it outline qualifications for the agency or person responsible for testing. Those responsibilities have been left to the local or state adopters to outline.

Water submeters for multi-family buildings fall within the scope of section 3.36 of Handbook 44. The standard for water meter accuracy is plus or minus 1.5% at normal flow and plus 1.5% or minus 5% at low flow. Handbook 44 has been adopted entirely in 39 states and partly in the remaining 11 states and is updated annually. Weights and measure officials respond to complaints by consumers regarding meter accuracy.

Water and Energy Efficiency Standards

Under the National Appliance Energy Conservation Act, the US Department of Energy administers a set of standards for the energy efficiency of certain newly manufactured consumer appliances and commercial equipment and the water efficiency of certain newly manufactured plumbing products. Following action by at least 17 states to set water efficiency standards for plumbing products, Federal legislation was enacted in 1992 containing uniform national standards for the efficiency of toilets, showerheads, urinals, lavatory and kitchen faucets, and faucet aerators. Although state standards went into effect at various dates as early as 1989, national standards covered all products manufactured or imported into the US beginning January 1, 1994. Non-conforming products manufactured or imported prior to that date were allowed to be sold from inventory. It has been shown that plumbing products meeting the efficiency standards enacted in 1992 reduce indoor residential water use by about 20% (Mayer et. al. 1999).

The Department of Energy has also adopted energy efficiency standards for certain water using appliance that encourage (but do not explicitly require) improved water efficiency. Efficiency standards for residential dishwashers are currently in place and efficiency standards for clothes washers have been increased in two steps, taking effect January 2004 and January

2007 respectively. The Department of Energy predicts that compliance with the 2007 standard will result in substantial national water savings over a twenty-year period.

Each of these standards has the potential to measurably influence the water consumption of multi-family dwellings. Since all of the standards identified above apply only to new products, the rate of product replacement is a primary determinant of the amount of water savings that may be achieved at any future date. (The pace of new construction is the other primary determinant.) Dishwashers and residential clothes washers have an average life of about 14 years. However, the average life of a residential toilet is about 20 to 25 years, and it is not uncommon for some fixtures to last 50 years or more. Fittings such as showerheads and faucets may experience comparable longevity. For long-lasting products such as plumbing, the age of the building stock will have an important influence on water consumption.

POLICIES OF STATES AND UTILITIES TOWARD MULTI-FAMILY BILLING

State Regulatory Survey

A survey of state policies toward multi-family billing methods is maintained by the National Submetering and Utility Allocation Association (NSUAA), a trade association for companies involved in multi-family billing for all types of utility services, i.e., water, wastewater, electric, natural gas, solid waste, etc. NSUAA first undertook this survey in 1999 and periodically updates the information as new policies are made known to its members and staff. NSUAA attempts to track state and local policies toward both submetering and RUBS, as well as whether service fees are allowed as part of a billing system.

NSUAA cautions readers not to rely on this summary information as legal advice, noting that information is subject to frequent change and deals with matters of interpretation. With the permission of NSUAA, the latest (March 2004) overview of state policies regarding water and wastewater billing is presented in Table 7.1.

Table 7.1 NSUAA Summary of State Regulatory Policies

State	Submetering Allowed?	RUBS Allowed?	Service Fees Allowed?
Alabama	Yes	Yes	Yes
Alaska	Yes	Yes	Yes
Arizona	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes
California	Yes	Yes	Yes
Colorado	Yes	Yes	Yes
Connecticut	Yes	Yes	Yes
Delaware	Yes	**No** (only prior to 1996)	Yes
Florida	Yes	Varies by county	Yes
Georgia	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes
Idaho	Yes	Yes	Yes
Illinois	Yes	Yes	Yes
Indiana	Yes	Unclear	Yes
Iowa	Yes	Yes	Yes
Kansas	Yes	Yes	Yes
Kentucky	Yes	Yes	Yes
Louisiana	Unclear	Yes	Yes
Maine	Yes	Yes	Yes
Maryland	Yes	Yes	Yes
Massachusetts	**No** (legislation pending)	**No**	**No**
Michigan	Yes	Yes	Yes
Minnesota	Yes	Yes	Yes
Mississippi	Yes	**No**	**No**
Missouri	Yes	Yes	Yes
Montana	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes
Nevada	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes
New York	Yes	Yes	Yes
North Carolina	Yes	**No**	Yes
North Dakota	Yes	Yes	Yes
Ohio	Yes	Yes	Yes
Oklahoma	Yes	Yes	Yes
Oregon	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes
South Carolina	Yes	Yes	Yes
South Dakota	Yes	Yes	Yes
Tennessee	Yes	Yes	Yes
Texas	Yes	Yes	**No**
Utah	Yes	Yes	Yes
Vermont	Yes	Yes	Yes
Virginia	Yes	Yes	Yes
Washington	Yes	Yes	Yes
West Virginia	Yes	Yes	Yes
Wisconsin	Yes	Yes	Yes
Wyoming	Yes	Yes	Yes
D.C.	Yes	Yes	Yes

Data developed by Marc Treitler and Brian Willie, Co-chairs of the Legislative and Regulatory Committee of the NSUAA. Information about the NSUAA can be found at <www.nsuaa.org>. March 2004.

The South Carolina Survey

In 2002, the South Carolina Public Service Commission undertook a regulatory review of submetering activity in the state. As part of this effort, the agency staff commissioned a survey of the regulatory practices of other states. For this survey, the 50+ member agencies of the National Association of Regulatory Utility Commissions were surveyed by the National Regulatory Research Institute (NRRI). This review secured information from 18 states, and found that only North Carolina claimed to regulate submeters as public utilities. Commissions in Florida, New York, and Pennsylvania also reported that owners who submeter cannot charge the resident more than what is billed by the utility company. The results of the South Carolina Survey are shown in Table 7.2.

Table 7.2 South Carolina Survey Results

State	PSC Regulate?	Health Agency Regulate?	Bill Number
Colorado	No	No	
Delaware	No	No	
Florida	*	Unaware	fs 367.022 (8)
Georgia	No	No	
Idaho	No	No	
Indiana	No	No	
Massachusetts	Does not allow		
Mississippi	No	No response	s 2797, 2002
Missouri	No	No response	
New Hampshire	No	No	
New Jersey	Does not allow		
New York	†	No	
North Carolina	Yes	Yes	‡
Ohio	No	No	
Pennsylvania	**	Unaware	**
Washington	No	No	
West Virginia	No	No	
Wisconsin	No	No	

*Resellers can charge equal to or less than what the resellers pay. Resellers cannot recoup any administrative, metering, or billing expenses.
†Does not regulate as a utility. Requires that submeterer charge no more than if billed by the utility.
‡Fully regulated. NCUC Docket No. W-100, Sub 30, General Statute 62-110 (g) 1997
**Resellers may not charge an amount greater than what the utility would charge for the same quantity of service. 66 PA.C.S.A. secs 1313 & 3313.

New Surveys of State Agencies and Water Utility Managers

Significant challenges remain for parsing out regulatory responsibility and current practices in a new and evolving field, such as water and wastewater billing systems. In an effort to further document a range of possible regulatory scenarios, four surveys were developed targeting different groups of officials. The survey design also shed light on informational barriers and other challenges to policy implementation. Copies of survey instruments used are provided in Appendix A.

This regulatory policy survey was completed in two parts. The first survey was conducted from October 2002 through January 2003 and queried state public utility commissions, state weights and measures officials, and state drinking water officials. The second survey, conducted from October 2003 through January 2004, queried water utility managers to determine their perspective on regulation and shed more light on communication between utilities and regulators in the area of water and wastewater billing. Each survey documents the *perceptions* of public officials regarding this issue. The methodology for each survey set follows.

PUCs, Bureaus of Weights and Measures, and State Drinking Water Officials

Surveying was conducted from October 2002 through January 2003. The survey method included contacting potential survey candidates via e-mail or fax with a cover letter requesting participation in the survey and the survey itself. A follow-up letter and another copy of the survey were e-mailed or faxed again if there was no response from the candidate after the first week. Additional follow-ups to non-responsive drinking water administrators were conducted over the phone.

Because water billing systems can be regulated by different entities within a state, three of the most likely agencies were chosen as initial contacts:

1) **Bureaus of Weights and Measures** – State bureaus control how most commercial measuring devices are regulated. This body would potentially regulate submetering equipment.
2) **State Public Utility Regulatory Commissions** – in most states, private or investor-owned water utilities are regulated by this entity, similar to traditional electric and gas utility regulation. In those states where a single commissioner or staff member was identified as having the lead on water utility regulation, that official received the survey.

3) **State Drinking Water Officials**– Although the US EPA maintains federal regulations to implement the Safe Drinking Water Act, nearly all states have "primacy" to oversee the implementation of the law by drinking water utilities within their borders.

Three survey instruments were developed for these three regulatory agencies, each with general questions about billing systems, and agency specific questions. Table 7.3 is a summary of results from the initial e-mail/fax of the surveys as well as an e-mail/fax follow-up one-week later. A total of 156 surveys were sent out 29 returned.[34] The response rate for the first round of contact and follow-up was 18 percent.

Table 7.3 Response rate to state agency regulatory surveys

State Agency	Surveys Sent	Surveys Received
Weights and Measures	53	6
PUCs	53	12
Drinking Water Officials	50	11

Of the surveys initially returned, the most detailed answers came from the Drinking Water Administrators. In the interest of maximizing the information yield of the survey within available time and funding, after the second round of contacts, all further follow-up was directed at the drinking water administrators, while surveys were obtained from other agencies within the state when specifically suggested by these Administrators, or as time allowed. Administrators were contacted by phone and the survey was given orally. At the end of the survey period, there were a total of 64 surveys received or interviews conducted.

Water Utility Managers Survey

To augment the previous studies and develop further background on the regulation on water and wastewater billing systems across the United States, an additional survey was directed to retail drinking water utility managers. The focus of the survey was utility-level regulations and incentives (if any) for multi-family billing systems.

In order to get a meaningful sample of utility policies in this evolving field, the largest retail water utilities in the 100 largest US cities were targeted, along with those additional utilities supporting this study that did not meet the initial screening criteria. The 2002 US Census listing of the 100 largest US cities was matched with the names of utilities contained in

[34]Includes the US Virgin Islands, Puerto Rico, and the District of Columbia

the AWWA WaterStats 1999 database. Duplications and wholesale water agencies were manually removed, and special service districts serving targeted cities were located.

A total of 103 utilities were surveyed. General Managers (or equivalent title) were targeted for the utilities. Contacts for the utilities were found through web sites and phone calls. The survey instrument developed for the utilities had general questions about the utility's characteristics, and specific questions about multi-family units and billing systems (Appendix A).

Surveying was conducted from October 2003 through January 2004, concurrent with contact identification. The method of surveying, similar to the initial survey, included contacting potential survey candidates via e-mail or fax containing a cover letter requesting participation in the survey and the survey itself. A follow-up letter and another copy of the survey were e-mailed or faxed again if there was no response from the candidate after the first week. All additional follow-ups were conducted over the phone. Table 7.4 lists the response rates. The overall response rate, after all survey waves were completed, was 40%.

Table 7.4 Water utility manager survey response rate

Survey Round	Surveys Sent	Surveys Received
Initial round	103	6
Follow-up 1	97	11
Phone follow-up	86	15
Final follow-up round	60	9
Total received	243	41

State Agencies and Water Utility Managers Survey Results

The following sections summarize the results from the four surveys of regulatory policy described in the methodology. These are:

- Bureau of Weights and Measures Officials
- Public Utility Commissions
- State Drinking Water Administrators
- Water Utility Managers

Note that these results reflect the respondents' *perceptions* of state and local regulations. For that reason, information should not be taken as a literal regulatory review, but as a reflection

of how well these regulations (or lack thereof) are understood by key staff within the agencies charged with their administration. Discussion of these discrepancies follows in the final section of the review.

Bureau of Weights and Measures Results

The state Bureaus of Weights and Measures (BWM) are tasked with regulating commercial measurement devices used within the states. The survey was intended to canvass the Bureaus to determine their level of involvement with the submetering of water, their processes for regulation, and the standards used for regulation. The results, despite being limited (and perhaps because of it), suggest that state BWMs have not been active in regulating water submeters. While most respondents identified a standard to be used should they be called upon to regulate a specific meter, none of the responses indicated that water submeters are frequently regulated.

A total of 53 surveys were sent out followed by one round of fax follow-ups and one round of phone follow-ups. The nine responses received are summarized in Table 7.5. The survey results from respondents from states with BWMs that partially regulate water submetering through the regulation of submeters, New York, Idaho, and California are summarized in the following sections.

Table 7.5 Survey responses from state Bureaus of Weights and Measures

State	Allows Submetering or RUBS	Regulates Water Submeters	Uses NIST Handbook for Equipment Standard
New York	Yes	Yes	Yes
Idaho	Yes	Yes	Yes
California	Yes	Yes	Yes
Oregon	No Answer	No	Yes
Arizona	No Answer	No	Yes
Maryland	No Answer	No	Yes
Minnesota	No Answer	No	No
Connecticut	No Answer	No	No
Pennsylvania	No Answer	No	No

New York. The state of New York's Bureau of Weights and Measures regulates the usage of water submeters according to the mandatory NIST Handbook 44 standard. The respondent indicated that the property owner notifies the Public Service Commission (NY PSC) when a submetering system is placed in service. The NY PSC then alerts the Bureau of Weights and

Measures, which dispatches a public official to test the accuracy of the submeters at the time of installation. No follow-up testing is mandated. The respondent noted that there was no specific incentive or discouragement for property owners to report submeter installation to the NY PSC, and there is no available listing of submetered premises.

Idaho. The Idaho Bureau of Weights and Measures is responsible for the regulation of water submeters, but not the actual submetering or billing. The job of the Idaho BWM is to assure the accuracy of the meters when called upon. The respondent reported that the state allows property owners to install water submeters in apartment buildings and allows the RUBS system for billing. The BWM uses NIST Handbook 44 as the standard for water submeters, but there is no standardized testing procedure in the state. The process by which the BWM is notified about the installation of water submeters is not outlined in state law.

California. The California Bureau of Weights and Measures is responsible for the regulations of water submeters, as allowed by law. The state allows property owners to install water submeters in apartments buildings and allows RUBS for billing as well. The BWM uses the NIST Handbook 44 as the standard for water submeters. Meters are tested and certified for compliance by the county BWM officials. Meters are required to be tested every 10 years for accuracy. The process by which the BWM is notified about the installation of water submeters is outlined in state law.

Public Utilities Commission Results

Regulation of public utilities is typically the responsibility of state Public Utility Commissions (PUCs). This survey was designed to assess the degree to which PUCs are regulating and responding to the issue of submetering. Of fifty surveys sent, twelve were returned. The surveys revealed differing levels of understanding and regulation of submetering and some ambiguities regarding agency responsibility.

Eleven of the 12 responding agencies – Colorado, Delaware, Maryland, Minnesota, Missouri, Nevada, Ohio, Oregon, Virginia, Washington, and West Virginia – reported that the rates and terms of service of water submetering and RUBS are not regulated by the state PUCs. The respondent from Washington noted a specific provision in the state Administrative Code (480-110) that declares submetering out of the PUC's jurisdiction. West Virginia reported that any submetering systems in the state (none were known) would be considered and regulated as public water utilities. The twelfth responding PUC, Florida, reported regulating the rates and

terms of service of submetering and RUBS, and there only for such systems that charge more than the original master metered utility bill in the counties over which it has jurisdiction.

While reporting that the PUC does not regulate rates, commissions in Nevada, Ohio, and Washington did note that building owners in the state can collect variable and fixed fees, billing and reading service fees, meter installation fees, and late fees. Delaware only allows for fixed or standby charges at the utility's retail rate.

The respondent from Delaware reported that the state offers an incentive for submetering. The report, however, may have been unfounded, as no documentation of incentives was found elsewhere. As noted below in the drinking water official results section, that agency reported that submetering is not allowed in Delaware, which is incorrect.

Drinking Water Administrators Results

In response to 50 surveys sent to each state drinking water administrator, researchers received 44 responses. Of those, only 3 states, Delaware, New Jersey, and Oregon, reported that submetering is explicitly prohibited by the state or agency. Delaware and Oregon reported that RUBS is also explicitly prohibited by the state or agency. New Jersey reported that RUBS is not prohibited by the agency.[35] However, follow-up work has indicated that submetering is currently allowed in New Jersey.

Three states, Connecticut, Tennessee, and Texas responded to the inquiry about submetering requirements in certain situations, such as new apartment construction. The response from Connecticut indicated that submeter installation was required on individual units constructed after 1987. Further research did not find support for this claim in either regulations or legislation. The response from Texas indicated that the state required installation of submeters for individual units in new construction beginning January 1, 2003. The state of Tennessee reported that a bill was submitted to the legislature requiring individual submeters in apartment buildings. Further research found that in the 1999-2000 legislative session a bill requiring the installation of individual unit meters in multi-unit buildings built after January 1, 2001 (1999 TN H.B. 3159, SB 2848) failed to pass into law.

The survey further inquired if owners or managers are required to inform public agencies when a submetering or RUBS billing system is placed in service. Eight states, Alabama, Alaska,

[35] New Jersey uses the term "submetering" to refer only to the situation in which a profit is made by the party reselling the water. The term "checkmetering" is used in New Jersey to cover this survey's definition of submetering. This survey's definition of submetering was explicitly laid out in the cover letter and the survey itself.

Mississippi, Missouri, Pennsylvania, South Carolina, Tennessee, and Texas responded that owners or managers were required to inform public agencies. Alabama, Alaska, Mississippi, Missouri, and South Carolina reported that owners or managers report submetering to the state environmental protection and/or health agencies, the Alabama Department of Environmental Management, the Alaska Department of Environmental Conservation, the Mississippi Department of Health, Missouri Department of Water Quality, and the South Carolina Department of Health and Environmental Conservation, respectively. Alaska further reported that the Regulatory Commission of Alaska be informed. Pennsylvania, Tennessee, and Texas reported that a state agency must be informed, but did not report a specific agency. Further research indicated that in Texas, the Commission on Environmental Quality must be informed (TAC 291.122).

The variety of state responses regarding how submetering systems are regulated under the state drinking water program reflects the differing interpretations of US EPA regulations. Sixteen states reported that submetering and RUBS systems are regulated under the State Drinking Water Offices as public water systems. Twenty-four states report that submetering is not regulated under the program, and therefore has no status. Three of those states, Delaware, Oklahoma, and Washington, reported that other state drinking water agency guidelines regulated submetering. Delaware reported that submetering systems are only regulated by the agency if water treatment is installed on the water line. North Carolina reported that such systems are regulated as consecutive systems, and New Jersey regulators make a case-by-case determination on submetering and RUBS systems to decide how they are regulated.

Oklahoma and Washington reported that systems are regulated under other water quality regulations, not the state drinking water program. (OAC 252.631 in Oklahoma and WAC 246.290 in Washington) Two states, Texas and Wisconsin, report that submetered systems are regulated in some way other than those reported above. Wisconsin did not report how the systems are regulated. Texas reported regulations located in the Texas Administrative Code at 291.121.

Regarding implementation of new regulations or guidelines, only Mississippi and South Carolina reported considering new guidelines for the regulation of submetering and RUBS. However, both states reported that the process was in the very early stages and follow-up research found no progress reaching the public comment stage.

Water Utility Managers Results

A total of 40 public utilities and one private utility providing service to more than 28 million people nationwide responded to the survey of water utility managers. Although the survey was targeted at retail and/or combination retail and wholesale utilities, two wholesale-only water suppliers inadvertently remained in the sample universe. One responded to the survey, but the responses given were not incorporated into these results. Thus, a total of 40 targeted utilities responded to questions on this survey.

The majority of utilities that responded to the survey (32) sell water at a wholesale and retail level. The remaining eight respondents reported to be retail only utilities: Anaheim Public Utilities, City of Chesapeake Department of Public Utilities, East Bay Municipal Utility District, Glendale (AZ) Utilities Utility Department, Glendale (CA) Water and Power, Hillsborough County (FL), Las Vegas Valley Water District, and the City of St. Louis Water Division.

Regarding the resale of water, 29 respondents reported allowing the resale of water by third parties. These utilities were more divided on the question of allowing resale of water for a profit: 17 reported allowing profit, 8 reported that it was not allowed, and 4 were unsure.

Twenty-six utilities reported that they had no regulations regarding water submetering programs. Of those, 13 responded that the lack of regulations meant that submetering was allowed, but not utility regulated. The remaining 13 did not respond to the follow-up question regarding submetering being allowed. Of the 14 utilities that reported having regulations for submetering, only 2, the City of Buffalo Water Department and the Shreveport Department of Operational Services, reported that submetering is prohibited by the utility. In summation, a total of 25 utilities stated explicitly that submetering is allowed by the utility (whether they regulate it or not), 13 reported that it was prohibited, and 13 did not provide specific responses.

Twenty-nine of the respondents reported no regulations regarding RUBS. Of those, the Arlington (TX) Public Utilities and the Las Vegas Valley Water District explicitly prohibit the use of RUBS. The nine utilities with regulations regarding RUBS allowed it, and two utilities were unsure of RUBS regulatory status within the utility.

To determine how utilities approached the metering of multi-family buildings, respondents were asked to report whether the utility installed master meters, individual meters in each unit, or both. Eleven utilities reported that individual meters are installed by utilities and the remaining 26 respondents reported installing master meters only (see Table 6). Utility responses are summarized in Table 7.6.

Table 7.6 Summary of utility regulatory survey results

Utility	Re-sale of water permitted?	Submetering		RUBS		Multi-family Metering Type
		Regs?	Allowed?	Regs?	Allowed?	
Anaheim Public Utilities	No	Yes	Yes	Unknown	Yes	Some master; some individual
Arlington Water Utilities	Yes*	Yes	Yes	Unknown	No	Some master; some individual
Augusta Utilities Department	No	No		No		Master service meter
Austin Water Utility	No	Yes	Yes	No		Some master; some individual
Birmingham Water Works	Yes	No		No		Some master; some individual
Buffalo Water Department	No	Yes	No	No		Master service meter
Charlotte-Mecklenburg Utilities Department	Yes	No		No		Master service meter
Chesapeake Department of Public Utilities, City of	Yes	No	Yes	Yes	Yes	Master service meter
Cincinnati Water Works	No	No		No		Master service meter
Columbus Water Division	Yes	No	Yes	No	Yes	Master service meter
Dallas Water Utilities	Yes	No	Yes	No	Yes	Master service meter
Denver Water Department	Yes†	No		No		Master service meter
East Bay Municipal Utility District	Yes*	No	Yes	No	Yes	Master service meter; some individual
Glendale Utilities Department	Yes	Yes	Yes	Yes	Yes	Master service meter
Glendale Water and Power	Yes	Yes	Yes	No	Yes	Some master; some individual
Hillsborough County	Yes*	Yes	Yes	Yes	Yes	Master service meter
Houston Department of Public Works and Engineering	Yes*	No	Yes	No	Yes	Master service meter
Indianapolis Department of Waterworks	Yes	No	Yes	Yes	Yes	Some master; some individual
Las Vegas Valley Water District	Yes‡	Yes	Yes	No	No	Master service meter
Lubbock Water Utilities	Yes	No	Yes	Yes	Yes	Some master; some individual
Madison Water Utility	Yes	No		No		Some master; some individual
Mesa Municipal Water Dept.	Yes	No		No		Master service meter
Milwaukee Water Works	Yes	Yes	Yes	Yes	Yes	Master service meter
Minneapolis Billing Utility, City of	No	Yes	Yes	No		Master service meter
New York Department of Environmental Protection	Yes**	No		No		Some master; some individual
Newark Public Utilities, City Of	Yes††	No	Yes	No	Yes	Master service meter
Oklahoma City Department of Water and Wastewater Utilities	Yes	No	Yes	No	Yes	Master service meter
Omaha Metropolitan Utilities District	No	No	Yes	No	Yes	Master service meter
Portland (OR) Water Bureau	Yes	No	Yes	No	Yes	Master service meter
San Antonio Water System	No	No	Yes	No	Yes	Master service meter

Utility	Re-sale of water permitted?	Submetering		RUBS		Multi-family Metering Type
		Regs?	Allowed?	Regs?	Allowed?	
San Diego County Water Authority	NA	NA		N/A		
San Jose Water Company	Yes*	Yes	Yes	No	Yes	Master service meter
Seattle Public Utilities	Yes	No		Pending	Yes	Master service meter
Shreveport Department of Operational Services	Yes††	Yes	No	Yes	Yes	Master service meter
Spokane Department of Water and Hydroelectric Services	Yes*	No		No		Master service meter
St. Louis Water Division, City of	Yes	No	Yes	No	Yes	Master service meter
St. Paul Water Utility	No	Yes	Yes	Yes	Yes	Master service meter
Tacoma Public Utilities, Water Division	Yes	No		No		Master service meter
Toledo Water Division, City of	Yes*	Yes	Yes	No	No	Master service meter
Tucson Water, City of	Yes††	No	Yes	No		Some master; some individual
Tulsa Public Works Department	Yes	No	Yes	No	Yes	Some master; some individual

*Allows for resale, but not for a profit to the seller
†Only for wholesale customers, not for residential
‡ Not for a profit, and only for trailer parks
**Wholesale yes, retail no position
††Unknown if resale for profit is allowed

DISCUSSION - KEY EXAMPLES OF STATE AND LOCAL POLICIES

It is clear from the foregoing that the regulatory environment for multi-family water and wastewater billing systems is unsettled, both at the federal level and in many states. To further understand regulatory frameworks and issues, it is helpful to outline the broad policy directions taken thus far by states, based on the responses to the surveys and information in the available literature. A limitation of the survey framework described above is that it reports *perceptions* of individuals regarding the submetering and RUBS regulations. To enhance the usefulness of this policy overview, follow-up interviews and background material (such as previous surveys and state specific literature searches) were used in the formation of this typology.

At least five types of regulatory environments are identified in this discussion:

- Landlord/Tenant Law
- Public Utility Regulation
- Safe Drinking Water Regulation
- Weights and Measures Regulation
- Local policy, legislation in progress, or no policy

Landlord/Tenant Law

In **Arizona**, submetering and RUBS are regulated under the Residential Landlord and Tenant Act – 2000 revision (Arizona Revised Statute Title 33, Chapter 10 33-1314.01). Under this act, the building owner *is allowed* to submeter or allocate billing to tenants. Owners are not required to report submetering to a state agency under the code. As long as the billing measure is clearly stated in the landlord/tenant agreement, the obligation of the building owner has been satisfied.

The relative simplicity of this code is likely responsible for the lack of confusion on the part of utilities. Three utilities were interviewed in Arizona, and although none of them referred to the code, all understood that submetering and RUBS were allowed, and that individual utilities were not responsible for installation or maintenance of metering equipment. One of the utilities, the City of **Tucson**, does offer individual meter installation service to building owners for a fee.

The **Phoenix** City Code (Section 6. Subsection 14-445) for the rental, leasing, and licensing for use of real property requires a multi-family building owner to pay .08 percent of the gross income from the rental property in taxes. Charges that the owner collects for utilities are

considered part of the owner's gross income. Part (b) of the subsection indicates that if individual meters have been installed for each dwelling unit and the owner does not charge for more than the cost of water, the revenue collected is not considered part of the gross income.

The residential landlord-tenant code of **Delaware** (25 Del. C. Section 5312) authorizes water submetering in multi-family buildings, if separate charges are provided for in the rental agreement. A property owner cannot charge more than the actual cost of utility service to the resident. The "metering system" *may* be inspected and *must* be approved by the state's Division of Weights and Measures. All other aspects of the law fall under the jurisdiction of the Consumer Protection Unit of the state Attorney General's office. The code also stipulates that except for "metering systems already in use prior to July 17, 1996," a property owner may not separately charge residents for utility service unless that service is separately metered, language that clearly bars new RUBS systems from being initiated.

Under Delaware's system, residents are allowed to request testing of the meter, which is provided by the owner, and the Consumer Protection Unit is authorized to conduct tests on the premises. If the submetering equipment is found to be accurate, the renter is responsible for paying for the testing. If the device is inaccurate, the cost of testing and replacement is covered by the owner. Notably, Delaware's statute explicitly bars a property owner who submeters from being deemed a public utility, and removes submetering practices from the jurisdiction of the Public Service Commission.

Mississippi's recently enacted statute (SB 2797 2002) specifically authorizes submetering of multi-family water and wastewater service in the interest of the conservation of water resources. Property owners seeking to submeter must obtain an acknowledgment of the submetering arrangement in writing from the resident, and charges are capped at the *pro rata* share of all water and wastewater services used by residents. Property owners may not disconnect water and wastewater service for nonpayment of submetered bills, and submeters must meet "standards for accuracy" of the American Water Works Association.

Illinois' Tenant Utility Payment Disclosure Act (765 ILCS 740) requires that apartment building owners and condominium associations provide residents and condominium owners with the formula for allocating the cost of utility services from a master meter, in writing, before demand for such payments can be made. Copies of the public utility bill must be made available upon request. Charges by apartment owners to residents may not exceed the total public utility

bill. Condominium associations are given more flexibility to reprogram any excess charges to other budgeted association accounts, or back to unit owners the following year.

Public Utility Regulation

In **Connecticut**, the Department of Public Utility Control has one brief regulation concerning water submetering. Section 16-11-55(4) (Regulations of Connecticut State Agencies) states: "Submetering shall be permitted only with the approval of the commission." To secure this approval, however, a property owner must file an "Application for a Connecticut Submeter Supplier Approval to Install and Use." Sections A and B of the permit application require, for each building to be submetered, submission of a detailed floor plan and plumbing plan, a detailed plan and diagram of submeter installation, and a copy of notices or written materials provided to the resident regarding submetering and reading. The plumber who will install the submeters must also be identified. In section C, the applicant must provide a description of how the applicant will respond to resident inquiries regarding the installation, reading, and billing of the submetered premises, a sample bill that will be sent to residents, the written procedures of the applicant regarding compliance with transparency of the bill adjustment process, and written procedures of the applicant governing resident unit entry. Section D of the permit application describes the responsibilities of the applicant with respect to customer service and complaint handling. This section requires the applicant to provide written copies of customer service documentation given to the resident, including procedures for collecting and returning the water utility security deposit and the collection of late fees. This section also includes the submission of copies of notifications given to the resident, including instructions on complaint filing (with the applicant and the DPUC), requesting a meter reading or test, and contacting the DPUC and local utility. The final section of the application (E) requires the applicant to submit a comment letter for the water utility regarding the submetering proposal, specific provisions in the lease for the facility in question, the letter notifying current residents that this service is going to begin, and the contractual agreement between the applicant and a vendor that will do the billing (if applicable). Note that these submissions, including those that pertain to sample bills, customer service, and complaint handling, are not required for RUBS installations.

In **North Carolina**, the North Carolina Utility Commission (NCUC) regulates submetering through the NCUC Rules Chapter 18 (R18-1-17): Resale of Water and Wastewater

Service and pursuant to North Carolina General Statute 62-110g. These rules require a property owner seeking to allocate utility costs to residents to apply for and obtain a certificate of authority as a Public Utility from the Commission (R18-13) and to file an annual Public Utility Report (R18-15). [Confirmation is being sought that allocators are exempt from most other Public Utility Requirements (section R18-13)].

NCUC's current regulations allow for the property owner, described as a "rent allocator," to charge a resident for the cost of the purchased water as read by an individual meter, as well as a fee of up to $3.75 to compensate the property owner for meter reading and billing costs (R18-16). The regulations also address several customer service issues, including a clear outline of renter notification in the lease about the “base” and “variable” rent charges, and provisions prohibiting the property owner from disconnecting water service as a result of non-payment and from charging the resident for excess usage resulting from a plumbing malfunction unknown to the resident, or that the property owner knows about (R18-17). To date, over 175 property owners are registered as regulated water/wastewater resale companies with the NCUC.

In September 2000, the **Texas** Commission on Environmental Quality (formerly the Texas Natural Resource Conservation Commission) adopted utility regulations (TAC 291.121-127) that apply to water submetering. The regulations were designed to “establish a comprehensive regulatory system to assure that the practices involving submetered and allocated billing of dwelling units and multiple use facilities for water and wastewater utility service are just and reasonable and include appropriate safeguards for tenants.”

Any property owner seeking to bill residents for utility service either through a RUBS system or through submetering must register with the commission. The regulations address: specific requirements for the availability and retention of records; the content of the lease as it pertains to utility billing; limitations on the charges to be allocated; permissible formulas for RUBS allocation; billing practices; discontinuance of service; and, submeter installation and testing. Owners are allowed to have billing completed by a third party for a fee. One of the Texas utilities interviewed offered this service itself (Austin Water Utility).

In 2001, Texas enacted a widely noted set of amendments to the state Water Code addressing submetering in new construction in several important ways (h.b.2404). Previous law had authorized submetering by owners of apartments, manufactured home rental communities, condominiums, and multiple use facilities. The 2001 law required that any such facility placed

under construction after January 1, 2003, must have a plumbing system that is compatible with the installation of individual meters or submeters. The law further required that submeters or individual meters be installed, either by the facility owners or by the local utility. Utilities are obligated to install submeters or individual meters if requested by a property owner or manager, unless the utility finds that the installation of meters is not feasible. However, if the utility so finds, then the property owner is not obligated to install meters or submeters either. Three of the Texas utilities surveyed for this study reported that they install individual meters in multi-family properties. However, the practice is not thought to be widespread. Taken together, the effect of these provisions has resulted in few new structures being fully submetered.

Furthermore, the law makes no provision for meters, once installed, to be used for billing purposes. At least one new property is reported to have submeters installed but is actually billing residents through a RUBS allocation system.

Another notable feature of the Texas statute is a set of requirements relating to water efficiency that must be met as a condition of the adoption of any new billing system, either submetering or RUBS. Prior to conversion, owners must perform an audit of each unit and repair any leaks that are found, and must ensure that all faucets, faucet aerators, and showerheads meet current water efficiency standards. Within one year of conversion, any toilets that flush in excess of 3.5 gallons per flush must be replaced with toilets that meet current water efficiency standards (1.6 gpf). The effectiveness of this last provision has been greatly diminished by exempting the large class of toilets designed to flush at 3.5 gpf, commonly installed in Texas from about 1980 to 1992, from the replacement requirement.

The **Virginia** State Corporation Commission (SCC) partially regulates water submetering and RUBS, and allows it. However, at the time of the survey for this report (2002), the SCC reported that the Department of Agriculture as well as the Consumer Service Division of the Consumer Protection Office of Product and Industry Standards have recently informed entities that are making use of RUBS that the use of a RUBS is not allowed under the statutes that those offices enforce.

In both **Wyoming** and **West Virginia**, the Public Service Commissions consider any properties with either submetering or RUBS to be a public utility subject to regulation, which may account for the lack of billing implementation in these two states.

Safe Drinking Water Regulation

In **North Carolina**, the North Carolina Drinking Water Act is administered by the Public Water Supply Section of the Division of Environmental Health, a part of the Department of Environment and Natural Resources. In conformance with guidance from the US EPA, North Carolina's law provides for submetered systems in multi-family properties to be deemed "consecutive water systems." The import of this designation is that under the law, the monitoring, analysis, and record-keeping requirements that would otherwise apply will be satisfied by the monitoring, analysis, and record-keeping performed by the supplying water system, i.e., the public utility. As of the end of 2002, the Water Supply Section reported a total of 236 active submetered apartment systems in its database of 8,000 active public water systems (NC Compliance Report 2002).

Concerns arose in North Carolina that the US EPA's continued insistence that the "sale" of water through billing systems carried obligations for certain on-site monitoring activities presented a potential barrier to expanded use of submetering (EPA 2000). In response, in 2001 the NC General Assembly revised its law (GS62-110g) "for the purpose of encouraging water conservation" by striking reference to "allowing the resale of water" and substituting procedures that "allow a lessor, pursuant to a written rental agreement, to allocate the costs for providing water and wastewater service on a metered use basis" to persons who occupy the same contiguous premises. The practical effect of the attempted work-around by the state is unclear.

The **Alabama** Department of Environmental Management undertook further refinement of the "consecutive water system" designation by creating a new designation, the "segmental water system," and found favor with the US EPA. The designation, which waived on-site monitoring requirements for multi-family properties with billing systems, carried certain additional qualifications. The designation was made available to facilities comprised primarily of indoor plumbing rather than underground distribution lines, and having no on-site water pumping, no on-site storage, and no cross-connection or backflow situations as attested to by licensed plumber. Additionally, segmental systems must employ a certified water operator "to be available as needed" to respond to water quality complaints. Qualifying facilities must apply for recertification every three years, and are maintained in ADEM's database of public water systems. As of the end of 2002, ADEM reported 16 segmental water systems out of a total of 705 active public water systems (ADEM 2002).

Weights and Measures Regulation

In **California**, the Division of Measurement Standards within the Department of Food and Agriculture is responsible for enforcement of state weights and measures laws. The Division works closely with county sealers of weights and measures who carry out most weights and measures enforcement activities at the local level.

Local Regulation Only, Legislation in Progress, or No Policy

The research presented above shows that most states have not implemented comprehensive regulatory strategies toward water submetering and RUBS that are well understood by regulatory agencies and other stakeholders. Despite the lack of comprehensive regulations in many of these states, submetering has occurred and has been dealt with in a variety of different ways. These ad hoc policies have a varied outcome because they are created under specific circumstances. This section outlines notable local policies and legislative proposals.

Massachusetts offers a good example of both the complex issues surrounding submetering, as well as the lack of communication on the issue between state offices, which often share jurisdiction over water-related laws. While nowhere in the state law is the practice of water submetering specifically forbidden, the Department of Telecommunications and Energy (DTE) as well as the Massachusetts Department of Health (MDOH) consider the process to be unlawful based on different precedents. In contrast to these two departments, the Massachusetts Department of Environmental Protection (DEP), which is responsible for the implementation of the federal Safe Drinking Water Act, claims to encourage the practice of submetering in apartment buildings as a general practice.

The DTE regulates utilities, including water, and asserts that the practice is unlawful due to the definition of water companies within chapter 165 of the Massachusetts General Laws (GLM). However, the text of the law is not clearly in agreement. When defining the entities responsible for compliance with the Safe Drinking Water Act, the text of the water section (section 165) of the GLM states:

> "Corporation" or ""company", every person, partnership, association or corporation, other than a municipal corporation, and other than a landlord supplying his tenant, engaged in the distribution and sale of water in the commonwealth through its pipes or mains.

The DOH in Massachusetts is responsible for implementing the tenant/landlord State Sanitary Code. The Code states:

> 410.180: Potable Water
> The owner shall provide for the occupant of every dwelling, dwelling unit, and rooming unit a supply of water sufficient in quantity and pressure to meet the ordinary needs of the occupant, connected with the public water supply system, or with any other source that the board of health has determined does not endanger the health of any potential user. (See 105 CMR 410.350 through 410.352). Examination of the water system shall include an examination of the plumbing system and its actual performance. If possible, such examination shall occur at the times and under such conditions as the occupant has identified the system as being insufficient.

To clarify this part of the code, due to questions regarding submetering as well as general questions regarding billing in apartments, DOH issued an advisory ruling that defines and interprets the word 'provide' to mean both supply and pay for. The advisory further clarifies that this means that the property owner cannot sell water for a separate price other than the average price rolled into the rent. There is no standard outline for how to calculate the average cost of water into the rent. In an interview, DOH noted that the rent can be readjusted with every new lease in the building, and that an increase in rent due to an increase in the cost of water to the property owner over the course of the year is lawful.

In the current Massachusetts legislative session (183rd General Court, 2003 Regular Session), a bill authorizing the assumption of water utility costs by residents has been introduced (2003 MA H.B. 3480). This bill allows for a property owner to submeter water (and other utility services) and charge residents based on usage, adding in charges for administrative costs borne by the owner. The owner is not authorized to charge further fees. The bill also authorizes RUBS using any "method that fairly allocates charges." If passed, this bill would clear a significant amount of regulatory uncertainty described above.

In **Florida**, the state Public Service Commission regulates submetering in counties over which it has jurisdiction. In **Miami-Dade County**, not under the jurisdiction of the PSC, the county adopted a comprehensive ordinance barring RUBS and regulating submetering in 1996, the Miami-Dade Remetering Ordinance.[36] This ordinance authorizes owners and remeterers (third party billing agencies) to submeter individual apartment units and contains requirements for annual registration and fees. In the Miami-Dade system, owners may not collect a profit

[36] Miami Dade Administrative Code. Article 18, Section 8A-380.

from the submetering. Meter testing and performance requirements are also included. The ordinance incorporates property owner/resident issue resolution through a detailed explanation of notification and billing practices. To fit within existing building and plumbing codes, the ordinance requires, in applicable situations, that owners or remeterers present building permits in their initial or annual requests to submeter. The Miami-Dade Ordinance is included in Appendix E.

The **Washington** State PUC does not regulate submetering or RUBS, under the Washington Administrative Code (WAC) 480-110-255 section 2(g): the commission does not regulate entities or persons that provide water only to their residents as part of the business of renting or leasing. The agency does allow for submetering and RUBS, however, as well as allowing the selling of water, and the collection of variable, fixed, service, late, and installation fees. The agency notes that they do not regulate submetering due to a potential increase in administrative costs to the utilities. The state code is unclear as to how submetering is regulated. It seems, both according to the code as well as the three public utilities interviewed in Washington, that there are no regulations for submetering, but that it is allowed by the state.

In the absence of state regulation in Washington, local governments may step in with regulations on billing allocation, including submetering. In reaction to the potential for fraudulent billing by third party entities, the city of **Seattle** has implemented an ordinance entitled the Third Party Billing Regulation (Seattle Municipal Code, Chapter 7.25). This ordinance was designed primarily to protect residents from deceptive and fraudulent billing for utilities, but has the ancillary effect of defining that submetering and RUBS are allowed, as long as appropriate notice is given to residents and property owners abide by the rules of unit entry described in the other parts of the Residential Landlord Tenant Act of 1973. The ordinance describes the way that property owners must inform the resident of metering changes, and also caps the amount of money that can be charged as an administrative fee ($2 per utility per month; $5 for all utilities per month).

Elsewhere, other localities considering action on billing systems include **Howard County, Maryland**. During its 2003 session, the Maryland General Assembly considered but failed to act on HB 976, a bill that would have barred any further installation of RUBS systems in the state, and require that any separate utility charges to residents be based upon actual use. Howard County has under consideration a more sweeping set of recommendations from a

consumer advisory board working on the issue since 2002. The board has recommended that all new multi-family construction be submetered; all existing apartments be converted to submetering within ten years; and that administrative fees be capped at $1 per unit per month.

The city of **Ventura** may become the first city in **California** to require submetering in newly constructed apartment buildings. The city council directed its staff to review the issue in 2003, and is now considering a staff recommendation to require meter installation for each new multi-family unit (Ventura County Star, 4-5-04).

One additional legislative proposal dealing with submetering should be noted. On February 24, 2004, a bill addressing submetering was introduced to the **Minnesota** legislature (2003 MN S.B.2281). This bill authorizes cities in Minnesota to establish water submetering programs and create grant and loan programs using federal, state, private, and city funds to assist owners with the financing of submetering projects.

TENANT ADVOCACY GROUPS

Tenant advocacy groups in the US are dedicated to protecting the rights of people who pay rent for housing. These organizations have an inherent interest in programs such as third party billing for water and wastewater that directly impact renters. To further explore how utility billing affects residents, tenant advocacy groups and organizations were contacted by the research team. The investigation aimed to find out if tenant organizations have taken any stance on submetering and RUBS, and what action (if any) has been taken by these groups. Over 60 tenant organizations across the country were contacted by phone or e-mail in 2003. The effort yielded responses from 20 organizations. Respondents ranged from those who were barely aware of submetering and RUBS to others who were actively involved with these billing systems.

Nine of the respondents reported that they were not involved with any of the issues associated with separate utility billing.[37] Of these respondents, most indicated that they had not been confronted with the issues of submetering or RUBS, and that they focused their efforts on other issues. A representative from the Ecumenical Community Development Organization of New York said, "Most of our advocacy is entered into to address immediate needs of affordable,

[37] The organizations were California Coalition for Rural Housing (CA), Coalition for Economic Survival (CA), Santa Monicans for Renters Rights (CA), People's Regional Opportunity Program (ME), Minnesota Housing Partnership (MN), North Carolina Low Income Housing Coalition (NC), Ecumenical Community Development

clean and decent housing or the lack thereof." Four of the respondents were involved with issues related to separate utility billing for electric and gas, but not for water.[38]

Three of the respondents reported having received an occasional phone call or complaint about RUBS and submetering, but were not taking any action on the issue.[39] The Arlington County Housing Information Center in Virginia reported receiving a variety of e-mail communications from residents related to water billing. The representative explained that the organization can only inform residents of their rights and refer them to their local representative. The representative said, "I can't give you any real numbers but I can safely say that we have heard many many complaints about ratio billing…. Again, the response from tenants has been overwhelmingly negative… Tenants at the more expensive buildings/complexes are usually the ones who complain the loudest and tend to do so by e-mail."

A representative from the Portland Tenants Union in Maine cited separate utility billing as a "major issue for tenants." While this organization is not taking any action at the present time, they do distribute "documentation forms" to all Portland tenants. Through the forms, they maintain a file of utility-billing complaints.

Only two organizations reported taking any action on the issues of separate utility billing for water. A representative from the Cleveland Tenants Organization in Ohio reported a strong aversion to separate utility billing, especially for RUBS. This group helped to successfully organize tenants in Cleveland Heights against a property owner that was allocating water bills with a ratio utility billing system. Now, RUBS is illegal in the City of Cleveland.

A representative from HOME Line in Minnesota reported about their experiences with separate water billing. The representative explained that they regularly represent tenants whose housing providers are violating laws associated with RUBS and said that their organization receives phone calls inquiring about it on the HOME hotline. The representative testified in 2001 to the Minnesota legislature against RUBS. The testimony included results from a study that found RUBS to slightly increase water use in 11 apartments that had been recently converted in Minnesota. Despite the testimony, RUBS remains legal in Minnesota. Since then, the representative reported that RUBS has become very popular with corporate owners of large

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Organization (NY), Washington Low Income Housing Network (WA), and Brandywine Tenants Association (Washington D.C.).

[38] The organizations were Florida Housing Coalition (FL), New Jersey Tenants Organization (NJ), Greater Syracuse Tenant Network, and Vermont Tenants Inc (VT).

apartments in the Minneapolis area. However, the representative said that there is not much collective tenant organizing among residents of these properties.

[39] The organizations were Minnesota Senior Federation (MN), Community Alliance of Tenants (WA), and Housing Advocacy Coalition (CO).